

## REMARKS

The Examiner has objected to Claim 5 as not being supported by the Specification or drawings. Claim 10 was rejected for failing to comply with 35 U.S.C. §112, second paragraph and under 35 U.S.C. §101.

Additional Claims 1-3, 6 and 10 were rejected Under 35 U.S.C §102(b) as being anticipated by Lewis, et al., U.S. Patent No. 5,378,078. And claims 5 and 7-8 were rejected under 35 U.S.C §103(a) as being obvious over Lewis, et al. Finally, claim 9 was rejected under 35 U.S.C. §103 over Lewis et al., in view of Johnson, U.S. Patent No. 5,842,811.

Applicant respectfully submits that the now pending Claims are allowable and will address the Examiner's objections and rejections below.

### THE CLAIM 5 OBJECTION

Applicant submits that the limitation of Claim 5 is supported at page 7, lines 9-11 of the specification. However, Applicant has amended said paragraph to clearly cover the limitation of Claim 5. Since Claim 5 was part of the application as filed, the addition of the supported language to the specification does not constitute new matter.

### THE SECTION 112 AND THE SECTION 101 REJECTION OF CLAIM 10

Applicant has cancelled Claim 10 thereby rendering this rejection moot.

### THE SECTION 102 REJECTION

The Examiner has held that Lewis, et al., shows a construction hole safety device comprising a top cap and an underlying body stem. Applicant respectfully submits that the Examiner has misconstrued Lewis, et al.

Lewis discloses a man hole cover. The man hole cover of Lewis does not include a top cap and body stem. Those skilled in the art would clearly understand Lewis to simply disclose a cap for closing a man hole. Lewis does not disclose a body stem portion as claimed by

Applicant. Accordingly, Applicant submits that the Section 102 rejection of Claim 1 is improper and requests that said rejection be withdrawn. Since Claim 1 is allowable the remaining claims which depend directly or indirectly from Claim 1 are also allowable.

Consideration of the application is respectfully requested. If any additional fees are due in this matter, please charge our Deposit Account No. 21-0800.

Respectfully submitted,

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